

AUBURN C. HUNSUCKER

IBLA 78-108

Decided April 24, 1978

Appeal from decision of the Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M 25956.

Affirmed.

1. Oil and Gas Leases: Reinstatement—Reinstatement: Generally

Reinstatement of an oil and gas lease terminated by operation of law may be allowed only where the lessee can establish to the satisfaction of the Secretary of the Interior that the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). When the only "payment" tendered timely consists of an unsigned check, it is not sufficient to satisfy the exculpatory standards of the reinstatement law and regulations.

2. Oil and Gas Leases: Assignments or Transfers—Oil and Gas Leases: Rental—Oil and Gas Leases: Reinstatement

An oil and gas lessee of record is responsible for paying rental timely. The fact that a lessee attempts to assign his lease does not absolve him of the rental payment requirements until the assignment is approved by the Bureau of Land Management.

APPEARANCES: Auburn C. Hunsucker, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Auburn C. Hunsucker appeals from a decision dated November 21, 1977, by the Montana State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease M 25956, which terminated by operation of law on November 1, 1977.

On February 16, 1976, appellant had attempted to assign the subject lease to Boardwalk Petroleum, Inc. (Boardwalk), of Salt Lake City, Utah. The assignment was never approved by BLM. However, appellant forwarded the notice of rental due to Boardwalk.

On October 25, 1977, Boardwalk mailed a check to BLM to cover the rental due on November 1, 1977. This check, which was received by BLM on October 28, was not signed by the maker. By notice dated November 2, 1977, BLM advised Boardwalk that the lease had terminated by operation of law on November 1 because the remittance was unacceptable. Boardwalk mailed a second check on November 5 which was received by BLM on November 7, 1977.

On November 9, 1977, BLM sent appellant the termination notice. On November 14, appellant submitted his petition for reinstatement and also sent a check to cover the rental.

In its decision, BLM stated that while Boardwalk was free to pay the rental, appellant, as the lessee of record, was responsible for timely rental payment. BLM determined that the rental was not timely paid and that no valid reasons were presented to justify late payment. It therefore denied reinstatement.

Appellant asserts that Boardwalk's failure to sign its first check was a mistake which should not preclude reinstatement.

[1] Reinstatement of an oil and gas lease is allowed where failure to pay the rental on the anniversary date is shown to be either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 43 CFR 3108.2-1(c). A failure to exercise reasonable diligence in payment of rental is "justifiable" when caused by a factor which is ordinarily outside of the control of the lessee, and occurring in close proximity to the anniversary date of the lease. Adolph F. Muratori, 31 IBLA 39 (1977); Pauline G. Thornton, 17 IBLA 251 (1974). Sufficiently extenuating circumstances must be present so as to affect the lessee's actions. Pauline G. Thornton, *supra*; Louis Samuel, 8 IBLA 268 (1972); *see*, John Rusiniak, 10 IBLA 74 (1973); R. G. Price, 8 IBLA 290 (1972). The word "justifiable" refers to a limited number of instances, where owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met. What is clearly not covered are instances of unextenuated forgetfulness, simple inadvertence or ignorance of the regulations. Louis Samuel,

supra. In the case at bar, the failure to sign the check was an instance of simple inadvertence. As such it is not within the ambit of the word "justifiable" in the above regulations.

[2] Since appellant's purported assignment of the lease had not resulted in a completed transfer of legal title, he remained the lessee of record at the time the rental was due. He had the responsibility of either making timely payment or making certain that the rental was timely paid. Leonard A. J. Tancredi, 32 IBLA 325 (1977). The purported assignment to Boardwalk and appellant's belief that Boardwalk was responsible for paying the rental does not constitute a justifiable reason for failure to make timely payment. Lynn Schusterman, 29 IBLA 182 (1977); Clarence Zuspann, 18 IBLA 1 (1974).

We conclude that appellant's petition for reinstatement was properly denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur.

Joan B. Thompson
Administrative Judge

Joseph W. Goss
Administrative Judge

